

## **Item W07-05 Response Form**

**Title:** Juvenile Law: Procedure Regarding Appointments of Appellate Attorneys for Children in Juvenile Dependency Appeals

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: \_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

☐ **Commenting on behalf of an organization**

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

Please **write** or **fax** or **respond using the Internet** to:

**Address:** Ms. Romunda Price,  
Judicial Council, 455 Golden Gate Avenue,  
San Francisco, CA 94102  
**Fax:** (415) 865-7664      **Attention:** Romunda Price  
**Internet:** [www.courtinfo.ca.gov/invitationstocomment](http://www.courtinfo.ca.gov/invitationstocomment)

<b>DEADLINE FOR COMMENT:</b> 5:00 p.m., Friday, January 26, 2007
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee.*  
*All comments will become part of the public record of the council's action.*

## Invitations to Comment W07-05

Title	Juvenile Law: Procedure Regarding Appointments of Appellate Attorneys for Children in Juvenile Dependency Appeals
Summary	Proposed new rule 8.402 and form JV-810 would implement Welfare and Institutions Code section 395(b)(1), which requires the Judicial Council to adopt a rule of court by July 1, 2007. The proposed rule sets forth the procedures for the child's trial attorney or Child Abuse Prevention and Treatment Act (CAPTA) guardian ad litem (GAL) to follow and factors for them to consider when requesting a separate appellate attorney for a child in a juvenile dependency appeal. <sup>1</sup> The committee also proposes amending rules 8.408 and 8.412 to clarify that the appellate record and the appellant's opening brief be served on the CAPTA GAL.
Source	Family and Juvenile Law Advisory Committee Hon. Jerilyn L. Borack and Hon. Susan D. Huguenor, Cochairs
Staff	David Meyers, 916-263-2498, <a href="mailto:david.meyers@jud.ca.gov">david.meyers@jud.ca.gov</a>
Discussion	<p>Assembly Bill 2480 (Evans); Stats. 2006, ch. 385 provides that in all dependency cases in which the child is the appellant, the Court of Appeal shall appoint a separate attorney for the child. In cases where the child is not the appellant the Court of Appeal shall have discretion to determine whether a separate attorney is necessary. In order to assist the Court of Appeal in its decision, the trial attorney shall make a recommendation to the Court of Appeal, "in any case in which the trial counsel or guardian ad litem determines that, for the purposes of the appeal, the child's best interests cannot be protected without the appointment of separate counsel."</p> <p>In addition, the bill also requires the Judicial Council to adopt a rule of court implementing the legislation by July 1, 2007. In developing this proposed rule, the Family and Juvenile Law Advisory Committee worked with the Judicial Council's Appellate Advisory Committee and a working group chaired by an appellate justice and composed of appellate and trial practitioners from around the state.</p> <p><u>Proposed Rule 8.402</u> Proposed rule 8.402 was drafted to address the statutory mandates of AB</p>

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<sup>1</sup> In most cases, the child's trial attorney will also serve as the CAPTA guardian ad litem under rule 5.662 of the California Rules of Court.

2480. Subdivision (a) defines the two situations in which counsel must be appointed. Subdivision (b) directs a CAPTA GAL to file a recommendation for independent counsel in cases where he or she determines that the child's best interest cannot be protected without the appointment of separate counsel, and subdivision (c) identifies the suggested time for filing.

Subdivision (d) fulfills the legislative mandate to set forth the factors to be considered by a GAL or trial counsel in making a recommendation to the Court of Appeal. The statute specifically directs a GAL to consider "the extent to which there exists a potential conflict between the interests of the child and the interests of any respondent." Section (d)(1)(A) expresses this as "an actual or potential conflict exists between the interest of the child and the interests of any respondent." This factor is intended to address many situations including where the appeal involves an ethical conflict of interest; where the appeal involves an order supported by the child's attorney but opposed by the respondent and other parties; and situations where the child's trial counsel has concern with issues raised in the appellant's opening brief or in the brief of another respondent. The committee specifically invites comment on whether this factor as drafted provides sufficient guidance on the range of factual situations it is intended to cover.

Subdivision (d)(1) also identifies as a factor the rare situation where the CAPTA GAL appointed in the trial court is not an attorney. Additional factors listed in (d)(2) include whether the child is of a sufficient age or development such that he or she is able to understand the nature of the proceedings and the child expresses a desire to participate in the appeal or the child's wishes diverge from trial counsel's position; whether the child took a legal position in the trial court adverse to that of one of his or her siblings; and any other factors relevant to the child's best interest.

The committee invites specific comment on how best to implement the mandates of AB 2480 in the context of appellate practice and procedure. Public comment is especially sought on the following three issues:

1. Implementation in light of the requirement in rule 8.416(e) that the appellant's opening brief must be filed within 30 days of the filing of the record to permit determination of the appeal within 250 days after the notice of appeal is filed.
2. Procedures for assignment of an attorney to represent the child on appeal.

3. Whether the factors list in subdivision (d) give trial counsel sufficient guidance regarding what to consider when deciding whether to request a separate appellate attorney for a child in a juvenile dependency appeal without creating an undue burden.

Proposed Form JV-810

Proposed new optional form JV-810, *Recommendation for Appointment of Appellate Attorney for Child*, was developed in an effort to create consistency among practitioners and uniformity in procedure. In jurisdictions where an independent attorney is not routinely appointed, practitioners may submit a letter to the Court of Appeal outlining the need for such an attorney. The form incorporates much of the structure used in these letters and mirrors the content of the rule. This form is intended to provide the Court of Appeal with basic information about the child, easily identify the stated recommendation, and provide guidance to trial attorneys on how to support their recommendations.

Amended Rules 8.408 and 8.412

In addition, to maintain consistency throughout the rules, the committee also proposes amending rules 8.408 and 8.412. Currently, rule 8.408(d)(1)(B) directs the appellate court clerk to serve a copy of the record upon the minor. The amendment seeks to change “minor” to “the child’s guardian ad litem appointed pursuant to rule 5.662 or the child’s trial counsel” to ensure that the child’s CAPTA GAL is informed of appellate activities allowing the CAPTA GAL to make appropriate recommendations.

The committee is also seeking to add a third subdivision to rule 8.412 (d)(2) to direct appellants to serve a copy of each brief upon “child’s guardian ad litem appointed pursuant to rule 5.662 or the child’s trial counsel” to ensure that guardians or trial counsel have the ability to make an informed recommendation to the Court of Appeal regarding the appointment of independent counsel.

The relevant portions of AB 2480 are attached, along with the proposed texts of new rule 8.402, and amended rules 8.408 and 8.412, and form JV-810.

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Attachments

Rule 8.402 of the California Rules of Court would be adopted, and rules 8.408 and 8.412 would be amended effective July 1, 2007, to read:

**Rule 8.402 Appointment of an appellate attorney for children in juvenile dependency proceedings**

**(a) Appointment**

The Court of Appeal must appoint an attorney to represent the child in an appeal from an order or judgment in a juvenile dependency proceeding in the following two situations:

- (1) If the child is an appellant and trial counsel or the guardian ad litem appointed under rule 5.662 wishes to seek appellate relief from the trial court's judgment for the child.
- (2) If the child is not an appellant and the Court of Appeal determines upon its own motion or pursuant to a recommendation by the child's trial counsel or guardian ad litem appointed under rule 5.662, that appointment of counsel would benefit the child because the child's best interests cannot be protected in the appeal without the appointment of separate counsel. The procedures outlined in subdivisions (c) – (e) state the steps to be followed by persons seeking appointment of appellate counsel for nonappealing children.

**(b) Recommendation**

In any juvenile dependency proceeding in which a party other than the child files a notice of appeal, if the child's trial counsel or guardian ad litem concludes that, for purposes of the appeal, the child's best interest cannot be protected without the appointment of separate counsel on appeal, the trial counsel or guardian ad litem must file a recommendation in the Court of Appeal for appointment of separate counsel.

**(c) Time to file the recommendation**

A recommendation from trial counsel or the guardian ad litem may be filed at any time after a notice of appeal has been filed but should be filed in the Court of Appeal no later than 20 calendar days after the filing of the last appellant's opening brief.

**(d) Factors to be considered in making a recommendation**

- (1) In determining whether to recommend that the Court of Appeal appoint separate counsel for the child for purposes of the appeal, the trial counsel or guardian ad litem should consider whether:

1  
2       (A) An actual or potential conflict exists between the interest of the child and  
3       the interests of any respondent; or

4  
5       (B) The child did not have an attorney serving as his or her guardian ad litem  
6       in the trial court.

7  
8       (2) Any of the following factors may have a bearing on whether the appointment  
9       of separate appellate counsel is in the child's best interest:

10  
11       (A) The child is of a sufficient age or development such that he or she is able  
12       to understand the nature of the proceedings, and:

- 13  
14           i. The child expresses a desire to participate in the appeal; or  
15           ii. The child's wishes diverge from his or her trial counsel's position;

16  
17       (B) The child took a legal position in the trial court adverse to that of one of  
18       his or her siblings; or

19  
20       (C) The existence of any other factors relevant to the child's best interests.

21  
22       **(e) Form of recommendation**

23  
24       The trial counsel or guardian ad litem may use Judicial Council form JV-810,  
25       *Recommendation for Appointment of Appellate Attorney for Child.* Any  
26       recommendation for separate counsel must include the information provided on  
27       form JV-810.

28  
29                               **Advisory Committee Comment**

30  
31       Generally, separate counsel for a nonappealing child will not be appointed for the purpose of introducing  
32       postjudgment evidence. See California Code of Civil Procedure Section 909; *In re Zeth S.*(2003) 31  
33       Cal.4th 396; *In re Josiah Z.* (2005) 36 Cal.4th 664. For further discussion, see *In re Mary C.*, (1995) 41  
34       Cal.App.4th 71.

1 **Rule 8.408. Preparing, sending, augmenting, and correcting the record**

2  
3 (a)–(c) \*\*\*

4  
5 **(d) Sending the record**

6  
7 (1) When the transcripts are certified as correct, the superior court clerk must  
8 immediately send:

9  
10 (A) The original transcripts to the reviewing court, noting the sending date  
11 on each original; and

12  
13 (B) One copy of each transcript to the appellate counsel for the appellant, the  
14 respondent, and the ~~minor~~ child's guardian ad litem appointed under rule  
15 5.662 or the child's trial counsel.

16  
17 (2)–(3) \*\*\*

18  
19 (e) \*\*\*

20  
21 **Rule 8.412. Briefs by parties and amici curiae**

22  
23 (a)–(c) \*\*\*

24  
25 **(d) Additional service requirements**

26  
27 (1) A copy of each brief must be served on the superior court clerk for delivery to  
28 the superior court judge.

29  
30 (2) A copy of each brief must be served on the child's guardian ad litem appointed  
31 under rule 5.662 or the child's trial counsel.

32  
33 ~~(2)~~(3) If the Court of Appeal has appointed counsel for any party:

34  
35 (A) The county child welfare department and the People must serve two  
36 copies of their briefs on that counsel; and

37  
38 (B) Each party must serve a copy of its brief on the district appellate project.

39  
40 ~~(3)~~(4) In delinquency cases the parties must serve copies of their briefs on the  
41 Attorney General and the district attorney. In all other cases the parties must  
42 not serve copies of their briefs on the Attorney General or the district attorney  
43 unless that office represents a party.

1        ~~(4)~~(5)    The parties must not serve copies of their briefs on the Supreme Court  
2                under rule 8.44(b)(1).  
3



COURT OF APPEAL, _____ APPELLATE DISTRICT, DIVISION _____	Court of Appeal Case Number:
	Superior Court Case Number:
ATTORNEY OR PARTY WITHOUT ATTORNEY ( <i>Name, state bar number, and address</i> ):  _____ TELEPHONE NO.: _____ FAX NO. ( <i>Optional</i> ): _____ E-MAIL ADDRESS ( <i>Optional</i> ): _____ ATTORNEY FOR ( <i>Name</i> ): _____	<b>FOR COURT USE ONLY</b>  <b>Draft 12</b> <b>12/12/06 xyz</b> <b>Not approved by</b> <b>the Judicial Council</b>
APPELLANT:  RESPONDENT:	
<b>RECOMMENDATION FOR APPOINTMENT OF APPELLATE ATTORNEY FOR CHILD (California Rules of Court, Rules 5.662, 8.402)</b>	

### INSTRUCTIONS—READ CAREFULLY

- Read the entire form *before* completing any items.
- This form must be clearly handprinted in ink or typed.
- Complete all applicable items in the proper spaces. If you need additional space, add an extra page and check the "Additional pages attached" box on page 2.
- If you are filing this form in the Court of Appeal, file the original and 4 copies.
- If you are filing this form in the California Supreme Court, file the original and 10 copies.
- Notify the clerk of the court in writing if you change your address after filing your form.

Individual Courts of Appeal or the Supreme Court may require documents other than or in addition to this form. Contact the clerk of the reviewing court for local requirements.

APPELLATE CASE TITLE:  	APPELLATE CASE NUMBER:  
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1. Trial counsel or court-appointed guardian ad litem for the child pursuant to rule 5.662 in the above-captioned case:
  - a. Name:
  - b. I am the ☐ Trial counsel ☐ Guardian ad litem ☐ Other
  - c. Address (*specify*):
  - d. Telephone number (*specify*):
2. I recommend that an appellate attorney be appointed for the child in this case.
3. The child's best interests cannot be protected without the appointment of separate counsel on appeal for the following reasons (*check all that apply*):
  - a. ☐ An actual or potential conflict exists between the interests of the child and the interests of any respondent.
  - b. ☐ The child did not have an attorney serving as the guardian ad litem in the trial court.
  - c. ☐ The child is of a sufficient age or development such that he or she is able to understand the nature of the proceedings, and
    - (1) ☐ the child expresses a desire to participate in the appeal; or
    - (2) ☐ The child's wishes diverge from his or her trial counsel's position.
  - d. ☐ The child took a legal position in the trial court adverse to that of one of his or her siblings.
  - e. ☐ Other factors relevant to the child's best interests exist.
4. Facts and reasons supporting your recommendation (*specify*):

☐ Additional pages attached.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)



\_\_\_\_\_  
(SIGNATURE OF APPLICANT)

## **Assembly Bill No. 2480**

### **CHAPTER 385**

An act to amend Sections 317 and 395 of the Welfare and Institutions Code, relating to dependent children.

[Approved by Governor September 22, 2006. Filed with  
Secretary of State September 22, 2006.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 2480, Evans. Dependent children: counsel.

Existing law authorizes a child or counsel for a child, with the informed consent of the child if the child is found by a court to be of sufficient age and maturity to consent, to invoke the psychotherapist-client privilege, physician-patient privilege, and clergy-penitent privilege.

This bill would provide that a child over 12 years of age shall be presumed to be of sufficient age and maturity to consent, subject to rebuttal by clear and convincing evidence.

Existing law requires the court to appoint counsel for a child in dependency proceedings at the trial level, unless the court finds that the child would not benefit from the appointment of counsel.

This bill would require the court of appeal, in any appellate proceeding in which the child is an appellant, to appoint separate counsel for the child. The bill would also require the court of appeal, if the child is not an appellant, to appoint separate counsel for the child if the court of appeal determines, after considering recommendations of the trial counsel or guardian ad litem for the child, that appointment of counsel would benefit the child. The bill would require the Judicial Council to implement this provision by promulgating a rule of court by July 1, 2007, as specified.

The bill would also require the Judicial Council to report to the Legislature, by July 1, 2008, information regarding the status of appellate representation of dependent children, the results of implementing those provisions, and other recommendations regarding the representation of dependent children in appellate proceedings.

The bill would incorporate additional changes to Section 317 of the Welfare and Institutions Code made by SB 678 and this bill to take effect if both bills are enacted and this bill becomes operative last.

*The people of the State of California do enact as follows:*

SECTION 1. Section 317 of the Welfare and Institutions Code is amended to read:

317. (a) When it appears to the court that a parent or guardian of the child desires counsel but is presently financially unable to afford and cannot for that reason employ counsel, the court may appoint counsel as provided in this section.

(b) When it appears to the court that a parent or guardian of the child is presently financially unable to afford and cannot for that reason employ counsel, and the child has been placed in out-of-home care, or the petitioning agency is recommending that the child be placed in out-of-home care, the court shall appoint counsel for the parent or guardian, unless the court finds that the parent or guardian has made a knowing and intelligent waiver of counsel as provided in this section.

(c) If a child is not represented by counsel, the court shall appoint counsel for the child unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding. A primary responsibility of any counsel appointed to represent a child pursuant to this section shall be to advocate for the protection, safety, and physical and emotional well-being of the child. Counsel for the child may be a district attorney, public defender, or other member of the bar, provided that the counsel does not represent another party or county agency whose interests conflict with the child's interests. The fact that the district attorney represents the child in a proceeding pursuant to Section 300 as well as conducts a criminal investigation or files a criminal complaint or information arising from the same or reasonably related set of facts as the proceeding pursuant to Section 300 is not in and of itself a conflict of interest. The court may fix the compensation for the services of appointed counsel. The appointed counsel shall have a caseload and training that ensures adequate representation of the child. The Judicial Council shall promulgate rules of court that establish caseload standards, training requirements, and guidelines for appointed counsel for children and shall adopt rules as required by Section 326.5 no later than July 1, 2001.

(d) The counsel appointed by the court shall represent the parent, guardian, or child at the detention hearing and at all subsequent proceedings before the juvenile court. Counsel shall continue to represent the parent or child unless relieved by the court upon the substitution of other counsel or for cause. The representation shall include representing the parent or the child in termination proceedings and in those proceedings relating to the institution or setting aside of a legal guardianship.

(e) The counsel for the child shall be charged in general with the representation of the child's interests. To that end, the counsel shall make or cause to have made any further investigations that he or she deems in good faith to be reasonably necessary to ascertain the facts, including the interviewing of witnesses, and he or she shall examine and cross-examine witnesses in both the adjudicatory and dispositional hearings. He or she may also introduce and examine his or her own witnesses, make recommendations to the court concerning the child's welfare, and participate further in the proceedings to the degree necessary to adequately

represent the child. In any case in which the child is four years of age or older, counsel shall interview the child to determine the child's wishes and to assess the child's well-being, and shall advise the court of the child's wishes. Counsel for the child shall not advocate for the return of the child if, to the best of his or her knowledge, that return conflicts with the protection and safety of the child. In addition, counsel shall investigate the interests of the child beyond the scope of the juvenile proceeding and report to the court other interests of the child that may need to be protected by the institution of other administrative or judicial proceedings. The attorney representing a child in a dependency proceeding is not required to assume the responsibilities of a social worker and is not expected to provide nonlegal services to the child. The court shall take whatever appropriate action is necessary to fully protect the interests of the child.

(f) Either the child or, if the child is represented by counsel, the counsel for the child, with the informed consent of the child if the child is found by the court to be of sufficient age and maturity to so consent, may invoke the psychotherapist-client privilege, physician-patient privilege, and clergy-penitent privilege; and if the child invokes the privilege, counsel may not waive it, but if counsel invokes the privilege, the child may waive it. Subject to rebuttal by clear and convincing evidence, a child over 12 years of age shall be presumed to be of sufficient age and maturity to consent. Counsel shall be holder of these privileges if the child is found by the court not to be of sufficient age and maturity to so consent. For the sole purpose of fulfilling his or her obligation to provide legal representation of the child, counsel for a child shall have access to all records with regard to the child maintained by a health care facility, as defined in Section 1545 of the Penal Code, health care providers, as defined in Section 6146 of the Business and Professions Code, a physician and surgeon or other health practitioner, as defined in former Section 11165.8 of the Penal Code, as that section read on January 1, 2000, or a child care custodian, as defined in former Section 11165.7 of the Penal Code, as that section read on January 1, 2000. Notwithstanding any other law, counsel shall be given access to all records relevant to the case which are maintained by state or local public agencies. All information requested from a child protective agency regarding a child who is in protective custody, or from a child's guardian ad litem, shall be provided to the child's counsel within 30 days of the request.

(g) In a county of the third class, if counsel is to be provided to a child at county expense other than by counsel for the agency, the court shall first utilize the services of the public defender prior to appointing private counsel, to provide legal counsel. Nothing in this subdivision shall be construed to require the appointment of the public defender in any case in which the public defender has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of the public defender after making a finding of good cause and stating the reasons therefor on the record.

(h) In a county of the third class, if counsel is to be appointed for a parent or guardian at county expense, the court shall first utilize the services of the alternate public defender, prior to appointing private counsel, to provide legal counsel. Nothing in this subdivision shall be construed to require the appointment of the alternate public defender in any case in which the public defender has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of the alternate public defender after making a finding of good cause and stating the reasons therefor on the record.

SEC. 1.5. Section 317 of the Welfare and Institutions Code is amended to read:

317. (a) (1) When it appears to the court that a parent or guardian of the child desires counsel but is presently financially unable to afford and cannot for that reason employ counsel, the court may appoint counsel as provided in this section.

(2) When it appears to the court that a parent or Indian custodian in an Indian child custody proceeding desires counsel but is presently unable to afford and cannot for that reason employ counsel, the provisions of subsection (b) of Section 1912 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and Section 23.13 of Title 25 of the Code of Federal Regulations are applicable.

(b) When it appears to the court that a parent or guardian of the child is presently financially unable to afford and cannot for that reason employ counsel, and the child has been placed in out-of-home care, or the petitioning agency is recommending that the child be placed in out-of-home care, the court shall appoint counsel for the parent or guardian, unless the court finds that the parent or guardian has made a knowing and intelligent waiver of counsel as provided in this section.

(c) If a child is not represented by counsel, the court shall appoint counsel for the child unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding. A primary responsibility of any counsel appointed to represent a child pursuant to this section shall be to advocate for the protection, safety, and physical and emotional well-being of the child. Counsel for the child may be a district attorney, public defender, or other member of the bar, provided that the counsel does not represent another party or county agency whose interests conflict with the child's interests. The fact that the district attorney represents the child in a proceeding pursuant to Section 300 as well as conducts a criminal investigation or files a criminal complaint or information arising from the same or reasonably related set of facts as the proceeding pursuant to Section 300 is not in and of itself a conflict of interest. The court may fix the compensation for the services of appointed counsel. The appointed counsel shall have a caseload and training that ensures adequate representation of the child. The Judicial Council shall promulgate rules of court that establish caseload standards, training requirements, and guidelines for

appointed counsel for children and shall adopt rules as required by Section 326.5 no later than July 1, 2001.

(d) The counsel appointed by the court shall represent the parent, guardian, or child at the detention hearing and at all subsequent proceedings before the juvenile court. Counsel shall continue to represent the parent, guardian, or child unless relieved by the court upon the substitution of other counsel or for cause. The representation shall include representing the parent, guardian, or the child in termination proceedings and in those proceedings relating to the institution or setting aside of a legal guardianship.

(e) The counsel for the child shall be charged in general with the representation of the child's interests. To that end, the counsel shall make or cause to have made any further investigations that he or she deems in good faith to be reasonably necessary to ascertain the facts, including the interviewing of witnesses, and he or she shall examine and cross-examine witnesses in both the adjudicatory and dispositional hearings. He or she may also introduce and examine his or her own witnesses, make recommendations to the court concerning the child's welfare, and participate further in the proceedings to the degree necessary to adequately represent the child. In any case in which the child is four years of age or older, counsel shall interview the child to determine the child's wishes and to assess the child's well-being, and shall advise the court of the child's wishes. Counsel for the child shall not advocate for the return of the child if, to the best of his or her knowledge, that return conflicts with the protection and safety of the child. In addition counsel shall investigate the interests of the child beyond the scope of the juvenile proceeding and report to the court other interests of the child that may need to be protected by the institution of other administrative or judicial proceedings. The attorney representing a child in a dependency proceeding is not required to assume the responsibilities of a social worker and is not expected to provide nonlegal services to the child. The court shall take whatever appropriate action is necessary to fully protect the interests of the child.

(f) Either the child or, if the child is represented by the counsel, the counsel for the child, with the informed consent of the child if the child is found by the court to be of sufficient age and maturity to so consent, may invoke the psychotherapist-client privilege, physician-patient privilege, and clergy-penitent privilege; and if the child invokes the privilege, counsel may not waive it, but if counsel invokes the privilege, the child may waive it. Subject to rebuttal by clear and convincing evidence, a child over 12 years of age shall be presumed to be of sufficient age and maturity to consent. Counsel shall be holder of these privileges if the child is found by the court not to be of sufficient age and maturity to so consent. For the sole purpose of fulfilling his or her obligation to provide legal representation of the child, counsel for a child shall have access to all records with regard to the child maintained by a health care facility, as defined in Section 1545 of the Penal Code, health care providers, as defined in Section 6146 of the Business and Professions Code, a physician

and surgeon or other health practitioner, as defined in former Section 11165.8 of the Penal Code, as that section read on January 1, 2000, or a child care custodian, as defined in former Section 11165.7 of the Penal Code, as that section read on January 1, 2000. Notwithstanding any other law, counsel shall be given access to all records relevant to the case which are maintained by state or local public agencies. All information requested from a child protective agency regarding a child who is in protective custody, or from a child's guardian ad litem, shall be provided to the child's counsel within 30 days of the request.

(g) In a county of the third class, if counsel is to be provided to a child at county expense other than by counsel for the agency, the court shall first utilize the services of the public defender prior to appointing private counsel, to provide legal counsel. Nothing in this subdivision shall be construed to require the appointment of the public defender in any case in which the public defender has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of the public defender after making a finding of good cause and stating the reasons therefor on the record.

(h) In a county of the third class, if counsel is to be appointed for a parent or guardian at county expense, the court shall first utilize the services of the alternate public defender, prior to appointing private counsel, to provide legal counsel. Nothing in this subdivision shall be construed to require the appointment of the alternate public defender in any case in which the public defender has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of the alternate public defender after making a finding of good cause and stating the reasons therefor on the record.

SEC. 2. Section 395 of the Welfare and Institutions Code is amended to read:

395. (a) (1) A judgment in a proceeding under Section 300 may be appealed in the same manner as any final judgment, and any subsequent order may be appealed as an order after judgment. However, that order or judgment shall be stayed by the appeal, unless, pending the appeal, suitable provision is made for the maintenance, care, and custody of the person alleged or found to come within the provisions of Section 300, and unless the provision is approved by an order of the juvenile court. The appeal shall have precedence over all other cases in the court to which the appeal is taken.

(2) A judgment or subsequent order entered by a referee shall become appealable whenever proceedings pursuant to Section 252, 253, or 254 have become completed or, if proceedings pursuant to Section 252, 253, or 254 are not initiated, when the time for initiating the proceedings has expired.

(3) An appellant unable to afford counsel, shall be provided a free copy of the transcript in any appeal.

(4) The record shall be prepared and transmitted immediately after filing of the notice of appeal, without advance payment of fees. If the



appellant is able to afford counsel, the county may seek reimbursement for the cost of the transcripts under subdivision (d) of Section 68511.3 of the Government Code as though the appellant had been granted permission to proceed in forma pauperis.

(b) (1) In any appellate proceeding in which the child is an appellant, the court of appeal shall appoint separate counsel for the child. If the child is not an appellant, the court of appeal shall appoint separate counsel for the child if the court of appeal determines, after considering the recommendation of the trial counsel or guardian ad litem appointed for the child pursuant to subdivision (e) of Section 317, Section 326.5, and California Rule of Court 1448, that appointment of counsel would benefit the child. In order to assist the court of appeal in making its determination under this subdivision, the trial counsel or guardian ad litem shall make a recommendation to the court of appeal that separate counsel be appointed in any case in which the trial counsel or guardian ad litem determines that, for the purposes of the appeal, the child's best interests cannot be protected without the appointment of separate counsel, and shall set forth the reasons why the appointment is in the child's best interests. The court of appeal shall consider that recommendation when determining whether the child would benefit from the appointment of counsel. The Judicial Council shall implement this provision by adopting a rule of court on or before July 1, 2007, to set forth the procedures by which the trial counsel or guardian ad litem may participate in an appeal, as well as the factors to be considered by the trial counsel or guardian ad litem in making a recommendation to the court of appeal, including, but not limited to, the extent to which there exists a potential conflict between the interests of the child and the interests of any respondent.

(2) The Judicial Council shall report to the Legislature on or before July 1, 2008, information regarding the status of appellate representation of dependent children, the results of implementing this subdivision, any recommendations regarding the representation of dependent children in appellate proceedings made by the California Judicial Council's Blue Ribbon Commission on Children in Foster Care, any actions taken, including rules of court proposed or adopted, in response to those recommendations or taken in order to comply with the Child Abuse Prevention and Treatment Act, as well as any recommendations for legislative change that are deemed necessary to protect the best interests of dependent children in appellate proceedings or ensure compliance with the Child Abuse Prevention and Treatment Act.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 317 of the Welfare and Institutions Code proposed by this bill and SB 678. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, (2) each bill amends Section 317 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 678, in which case Section 317 of the Welfare and Institutions Code, as amended by SB 678, shall remain operative only until the operative date of

this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

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